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Admitted in: ME

December 11, 2018

Michele Lumbert, Clerk  
Kennebec County Superior Court  
1 Court Street, Suite 101  
Augusta, ME 04330

Re: Paul Bates, et al. v. Commissioner, Department of Health and Human Services, et al.  
Docket No. CV-89-088

Dear Michele:

Enclosed please find for filing the Court Master's Recommendation Pursuant to Paragraph 298 dated December 11, 2018 in the above-captioned matter. I provided a copy to Justice Horton.

Thank you for your attention to this letter and enclosure.

Sincerely yours,



Daniel E. Wathen

DEW/sln  
Enclosure

Cc/w/enc: Phyllis Gardiner, AAG  
Mark Joyce, Esq.  
Kevin Voyvodich, Esq.  
Peter Rice, Esq.

STATE OF MAINE

KENNEBEC, ss

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-89-88

PAUL BATES, et al.,

Plaintiffs

v.

COMMISSIONER, DEPARTMENT  
OF HEALTH AND HUMAN  
SERVICES, et al.,

Defendants

**RECOMMENDATION**

In accordance with Paragraph 298 of the Settlement Agreement, I make the following recommendation *sua sponte*. I find that the Department proposes to take action to encumber and expend funds in non-compliance with the Consent Decree and the legislative appropriations that provided those funds solely for the provision of core mental health community services for persons who are not eligible for MaineCare.

The Department is in the process of negotiating an agreement with Correct Care Recovery Solutions to operate a 16 bed Secure Forensic Rehabilitation Facility that is currently under construction on a plot of land previously included within the campus of Dorothea Dix Psychiatric Center in Bangor. The plans call for the contract to be executed and funds encumbered within the next several days. Pursuant to the proposed agreement, funds will be encumbered for: 1. start-up costs in the current fiscal year, 2. \$4,717,540 for operation and

services in FY 20 in addition to funds for rental of the facility in the amount of \$332,500. To fund the operating agreement, the Department proposes to encumber \$5,417,448 in unexpended and non-lapsing balances from appropriations made in prior years for the so-called Consent Decree Funding. These funds grew out of a formal recommendation that I made on December 22, 2008 that the Department increase its supports for the eight core community mental health services set forth in the consent decree plan of 2006. In FY 11, the Legislature began appropriating under the title Consent Decree Funds, money for core mental health services for person ineligible for MaineCare. Such funding has continued in each successive biennium and for at least the past four years has been included in the base budget in the annual amount of \$5,797,300. It has been designated a non-lapsing account. The Commissioner's description of the funding as presented to the Appropriations Committee for FY 16/17 is attached hereto and is confined to core mental health services for ineligible recipients. The language in the budget bill enacted for FY 18/19 is as follows:

“What the budget purchases: A legal requirement to fund Mental Health Services-Community programs for individuals not eligible for MaineCare in order to conform to the Bates vs. DHHS Consent Decree. The community mental health services in community integration, assertive community treatment, daily living support, medication management, and Wellness Recovery and Action Plan services. The account allows for some funding to be used for short term residential services with the intent to move individuals into the community setting more quickly.”

The unexpended balances now identified to support the Secure Residential Facility did not accrue because of a lack of need for community mental health services. The Department's annual allocation process over the years has been cumbersome and has proven unsuccessful in providing funds in a timely manner to the providers and clients who had need for the services. In recognition of this problem SAMHS has recently implemented a system of monthly allocations to achieve flexibility in meeting the needs of clients placed on a waitlist and to avoid the delay

involved in the past in amending annual provider allocations. There is at present a pressing need for services and we have the ironic situation of unspent funds and yet waitlists for services. For example, the most critical service that is chronically in short supply is medication management. At the end of October, I was informed by one of the major providers that although they were providing medication management to more than 3,000 adults in their clinic, they had more than 489 adults on a waitlist and that approximately half of these people have a severe and persistent mental illness.

The Department's plan to utilize Consent Decree Funds to support the operation of the Secure Residential Treatment Facility in Bangor is at odds with and contravenes the appropriations made by Maine Legislature. In addition it violates the provisions of Consent Decree and the Consent Decree Plan adopted in 2006 with respect to the provision of core community mental health services.

I formally recommend that the Department neither encumber nor expend any Consent Decree funds to support any agreement for the operation of the Secure Forensic Residential Treatment Facility. It is my recommendation that such funds continue to be used for the purposes for which they were appropriated—core community mental health services for those ineligible for MaineCare.

DATED: December 11, 2018



Daniel E. Wathen, Court Master

# DHHS FY 16/17 Budget Initiative: Funding for Consent Decree

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## Bates v. DHHS Consent Decree

The Bates v. DHHS Consent Decree (i.e., the AMHI Consent Decree) requires the Department to submit a funding request to address the unmet needs of people with severe and persistent mental illness in the community and at Riverview Psychiatric Recovery Center.

## Initiative

This initiative provides funding to meet legal requirements of the Bates v. DHHS Consent Decree. It funds identified unmet needs in the Mental Health Services Community Programs account for the purposes of providing mental health services to people not eligible for MaineCare, and includes funding for services identified in the Consent Decree that are not reimbursable by MaineCare in order to comply with the terms of the Settlement Agreement.

The Department has proposed and advocated for a \$5.8 million Consent Decree budget. The Department will continue to monitor needs of persons with serious and persistent mental illness in the coming biennium, and, as required by the Consent Decree, will continue to advocate for funding necessary to meet Consent Decree obligations.

Year	Consent Decree Funds
SFY 16	\$5,797,300
SFY 17	\$5,797,300

## Impact

- **Individuals:** The requested funding provides needed services for people who have a serious and persistent mental illness and are not eligible for MaineCare. Core services currently funded with Consent Decree funds include Community Integration, Community Rehabilitation Services, Medication Management, and Assertive Community Treatment.
- **Providers:** The funding allows providers to serve those individuals who have a serious and persistent mental illness and are not eligible for MaineCare who meet criteria for the service. The requested funding also allows providers to deliver needed services not funded by MaineCare.

## Spending Priorities for SFY16/17 include:

- |  |             |
|--|-------------|
| • Assertive Community Treatment (ACT)        | \$422,853   |
| • Community Integration                      | \$3,525,135 |
| • Daily Living Support Services              | \$85,323    |
| • Medication Management                      | \$1,101,067 |
| • PEER Services                              | \$97,510    |
| • Vocational Long-Term Supportive Employment | \$181,422   |
| • Residential Treatment                      | \$46,690    |
| • Wraparound Funds                           | \$337,300   |